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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ENVIRONMENTAL DEFENSE,)	Case No. C 05 2090 SC
)	
Plaintiff,)	STIPULATED MOTION TO
)	EXTEND CONSENT
v.)	DECREE DEADLINE
)	
)	August 17, 2007
UNITED STATES ENVIRONMENTAL)	10:00 AM
PROTECTION AGENCY, et al.,)	
)	
Defendants.)	

In accordance with Paragraph 7 of the Consent Decree in this case, Plaintiff Environmental Defense and defendants United States Environmental Protection Agency and Stephen L. Johnson, Administrator United States Environmental Protection Agency, (collectively "EPA") jointly stipulate to this motion to extend the deadlines in Paragraphs 4 and 5 of the Consent Decree (as modified by previous extensions) by four months and six months, respectively, so that the Parties can expeditiously complete negotiations on an alternative resolution to this matter that includes a revised consent decree. In the event that the parties do not file a notice of lodging of a revised consent decree by

1 November 5, 2007, the deadlines in Paragraphs 4 and 5 of the Consent Decree (as
2 modified by previous extensions) would be extended by three months and five months,
3 respectively. In support of this motion, the Parties state as follows:

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5 1. This action concerns a petition submitted by Environmental Defense to
6 EPA asking EPA to list diesel engine exhaust as a hazardous air pollutant under section
7 112(b)(3) of the Clean Air Act, 42 U.S.C. § 7412(b)(3). On February 15, 2006, the Court
8 entered a Consent Decree that establishes deadlines for EPA to respond to that petition.
9 Paragraph 7 of the Consent Decree provides that the deadlines in Paragraphs 4 and 5 of
10 the Consent Decree may be extended for a period greater than 60 days with approval of
11 the Court and that such approval may be granted upon stipulation of the parties.
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13 2. The parties have previously agreed to extend the Consent Decree
14 deadlines on a number of occasions to provide an opportunity for the parties to discuss, in
15 meetings and conference calls, an alternative resolution. These discussions have
16 advanced significantly over the past two months. The Consent Decree, as modified,
17 currently requires EPA to either deny the petition or propose to grant it by September 5,
18 2007. DE 35. If EPA proposes to grant the petition, the Consent Decree currently
19 requires EPA to take final action to grant or deny the petition by October 3, 2007. Id. In
20 granting the last requested extension, the Court stated, "LAST EXTENSION to be
21 granted by the Court, without a Court Hearing." Id.
22

23 3. The parties have been diligently exploring a potential long-term solution
24 to the issues addressed in this litigation. Such a solution would require revisions to the
25 Consent Decree, and those revisions, if finalized, after public review and approval by this
26 Court, should eliminate the need for any additional extensions of the deadlines in
27
28

1 Paragraphs 4 and 5 of the Consent Decree. The parties have made substantial progress
2 over the last several weeks toward an agreement and are optimistic that we can resolve
3 this matter amicably through revisions to the Consent Decree. However, the next
4 deadline under the Consent Decree is September 5, 2007, which does not allow the
5 parties sufficient time to complete their on-going settlement negotiations and obtain the
6 necessary approvals from management at EPA and the Department of Justice.
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8 4. Accordingly, the parties have stipulated to a four month and six month
9 extension of the deadlines in Paragraphs 4 and 5 of the Consent Decree, respectively. If
10 the Parties' attempt to reach a long-term solution turns out not to be successful, then the
11 Parties stipulate that a three month and five month extension of the deadlines shall apply.
12

13 5. Consistent with the Court's order of July 11, 2007, we have scheduled a
14 hearing for August 17, 2007, concerning this stipulated motion for extension. While we
15 fully understand the Court's desire for a hearing given the prior extensions, we
16 respectfully request that the Court grant this joint stipulation without a hearing so that the
17 parties can devote their limited resources to reaching a final agreement on an alternative
18 resolution and preparing a revised consent decree for lodging with this court .
19

20 Accordingly, pursuant to Paragraph 7 of the Consent Decree, defendants EPA and
21 plaintiff Environmental Defense hereby stipulate, subject to approval by the Court, to an
22 extension of the deadline in Paragraph 4 of the Consent Decree for EPA to sign either a
23 proposal to grant plaintiffs' petition to list diesel emissions as a hazardous air pollutant or
24 a final denial of the petition from September 5, 2007, to January 7, 2008, and to an
25 extension of the deadline in Paragraph 5 of the Consent Decree for EPA to sign a final
26 determination if it proposes to grant the petition from October 3, 2007 to April 2, 2008,
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1 provided the parties file a notice of lodging of a revised consent decree by November 5,
2 2008. If the parties do not file a notice of lodging of a revised consent decree by
3 November 5, 2007, defendants EPA and plaintiff Environmental Defense hereby stipulate,
4 subject to approval by the Court, to an extension of the deadline in Paragraph 4 of the
5 Consent Decree for EPA to sign either a proposal to grant plaintiffs' petition to list diesel
6 emissions as a hazardous air pollutant or a final denial of the petition from September 5,
7 2007, to December 4, 2007, and to an extension of the deadline in Paragraph 5 of the
8 Consent Decree for EPA to sign a final determination if it proposes to grant the petition
9 from October 3, 2007 to March 3, 2008.
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11 Respectfully submitted on this 15th day of August, 2007.

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Respectfully submitted,

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IT IS SO ORDERED

8/16/07

